IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2068 OF 2005

Kashimira Leo Rebello .. Petitioner

versus

The Himalaya Drug Company .. Respondent

Dr.Leo Rebello husband of Petitioner present

Mr.R.V.Paranjpe for Respondent

CORAM : D.G. KARNIK, J

DATED : 9th August, 2005.

P.C.

1. Dr. Rebello the husband of the petitioner seeks leave under section 32 of the Advocates Act to represent her. Perused the application dated 14th July 2005 signed by the petitioner annexed at page 7 of the petition for permission to be represented by her husband. Leave granted. Heard Mr Rebello for the petitioner and Mr. Paranjpe learned counsel for the respondent.

2. By this petition, the petitioner challenges the

judgment and order dated 15th May, 2004 passed by the learned Presiding Officer, Labour Court, Mumbai rejecting the petitioner's application under section 33-C (2) of the Industrial Disputes Act (for short I.D.Act).

3. By an application dated 27th February 2005 filed under section 33-C (2) of the I.D. Act the petitioner claimed the dues amounting to Rs.27,67,600/-. In para 12 of the application the petitioner has alleged :

> " I was asked to give a resignation letter which I refused, as I still had 16 years of service left before superannuation."

Case of the petitioner in the application was that she was asked to give a resignation letter and that she had refused to do so. However, at the stage of arguments the petitioner through her representative submitted that the petitioner was forced to give the resignation. There is apparent inconsistency between the pleadings and the arguments. Assuming that the petitioner can be allowed to argue in variance of the pleadings still, in view of categorical denial by the respondent the disputed question would be whether

the petitioner was forced give the resignation. Such an issue submits the learned counsel, cannot be decided in an application under section 33-C (2) of the Act.

4. It is settled position in law that a proceeding under section 33-C (2) is generally in the nature of execution proceeding wherein the labour court calculates the amount of money due to the workman from his employer or if the workman is entitled to any benefit which is capable to be computed in terms of money the labour court computes the benefit in terms of money and passes an order for its payment. When the liability to pay is denied and there is a bonafide dispute whether the liability exists the dispute has to be first resolved in a reference under section 10 of the I.D.Act orunder anyother appropriate legal proceedings before making an application under section 33-C (2) of the I.D.Act. The adjudication as to the liability has to precede the application under section 33-C (2) of the I.D.Act.

5. In the present case the liability is claimed to arise out of the alleged obtaining of the forced

resignation from the petitioner. The respondent has denied that the resignation of the petitioner was obtained by force. In the circumstances, such an issue cannot be decided in an application under section 33-C (2) of the I.D.Act.

6. For these reasons, there is no merit in the petition which is hereby dismissed. Learned counsel for the respondent prays for costs. In view of the fact that the petition is rejected at the stage of admission itself, parties are directed to bear and pay their own costs incurred in this Court.

D.G.KARNIK, J